KILANG KOSFARM SDN BHD

v.

KOSMA NUSANTARA BHD (NO 2)

HIGH COURT MALAYA, TEMERLOH
RAMLY ALI J
[CIVIL SUIT NO: 22-32-2001]
22 MARCH 2002

CIVIL PROCEDURE: *Injunction - Erinford injunction pending appeal against order setting aside inter partes injunction - Principles applicable - Balance of convenience - Whether appeal would be rendered nugatory - Whether damages suitable and adequate remedy*

This was an application by the plaintiff for an Erinford injunction pending disposal of an appeal by the Court of Appeal against the decision of this court in dismissing the plaintiff's application for an *inter partes* interlocutory injunction. The plaintiff argued that the present application should be granted on the grounds that: (1) the *status quo* must be maintained pending the disposal of the appeal; (2) if the application was not granted, the appeal would be rendered nugatory in the event the plaintiff succeeded in the appeal; (3) the balance of convenience lay in favour of the plaintiff; and (4) damages was not an adequate remedy.

Held:

[1] The defendant would suffer great hardship if the injunction was granted as it may sustain long term losses that could not be compensated under the terms of the contract (between the plaintiff and the defendant), whereas the said contract expressly provided that the defendant would pay damages to the plaintiff in the event that the plaintiff was wrongly terminated. Hence, the balance of convenience clearly lay in favour of the defendant and since the issue of *"status quo"* is only relevant in cases where the balance of convenience is evenly balanced, the question of maintaining the *status quo* as requested by the plaintiff in this case did not arise. (pp 173 b, e-i)

[2] The plaintiff's success or failure in the appeal and main action would not be affected by its failure to obtain the Erinford injunction, and there would be no impediment to the plaintiff enforcing any judgment in its favour should it succeed in its appeal, and ultimately, its writ. There was no evidence to show that the defendant would not be in a position financially to honour the judgment obtained by the plaintiff. Therefore, there was no likelihood of a successful appeal against this court's decision being rendered nugatory. (p 174 g & h)

[3] Damages seemed to be a suitable and adequate remedy as the plaintiff would be adequately compensated for the temporary damage suffered between now and the date of the hearing of the appeal, if this court's decision is reversed by the Court of Appeal. (p 175 a)

[Application dismissed.]

Case(s) referred to:

American Cyanamid Co v. Ethicon Ltd [1975] AC 396 ***(foll)***
Associated Tractors Sdn Bhd v. Chan Boon Heng & Anor [1990] 2 CLJ 157; [1990] 1 CLJ (Rep) 30 ***(refd)***
Cocoa Processors Sdn Bhd v. United Malayan Banking Corporation Bhd & Ors (No 2) [1989] 1 CLJ 183; [1989] 1 CLJ (Rep) 436 ***(foll)***
Erinford Properties Ltd v. Cheshire County Council [1974] 2 All ER 448 ***(foll)***
Garden Cottage Foods Ltd v. Milk Marketing Board [1984] AC 130 ***(foll)***
Keet Geralds Francis Noel John v. Mohd Noor Abdullah & Ors [1995] 1 CLJ 293 ***(refd)***
London & Blackwell Rly Co v. Cross [1886] 31 Ch D 354 ***(foll)***
Ooi Meng Sua v. Aetna Universal Insurance Sdn Bhd [1994] MLJU 12 ***(refd)***
Perumahan Wira Seberang Sdn Bhd v. Lim Teng Huat & Ors And Third Party [1995] MLJU 156 ***(refd)***
See Teow Guan v. Kian Joo Holdings Sdn Bhd & Ors [1997] 2 CLJ 299 ***(refd)***
Wilson v. Church [1879] 11 Ch D 576 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 29 r. 1(2A), (2B)

For the plaintiff - V Manoharan (PY Chong); M/s Nordin Torji & Partners
For the defendant - Bastian Vendargon (GJ Goldie); M/s Vendargon & Partners

Reported by Suresh Nathan

JUDGMENT

Ramly Ali J:

This is an application by the plaintiff (*vide* encl. 52) for an Erinford injunction pending disposal of an appeal by the Court of Appeal against the decision of this court in dismissing the plaintiff's application for an *inter partes* interlocutory injunction. The order prayed for by the plaintiff in the present Erinford injunction is the same with the order prayed for in the earlier *inter partes* application except in the earlier application the injunction was to cover the period until disposal of the writ of summons filed earlier while in the present Erinford injunction the period to be covered is pending disposal of the appeal by the Court of Appeal. In the present application the plaintiff prayed for the following order:

1. Bahawa Defendan, pengarah-pengarah, pegawai-pegawainya, pekerja-pekerjanya, kontraktor-kontraktornya atau ejen-ejennya ditahan dari menganggu atau menghalang Plaintif dari melaksanakan hak-hak Plaintif dan/atau menunaikan obligasi Plaintif mengikut Perjanjian "Oil Palm Plantation Operation and Maintenance Contract" yang ditandatangani pada 1/7/1999 dan/atau menghalau Plaintiff daripada milikan tanah di bawah pegangan PT 1298 HS (D) 1295 dan PT 2602 HS (D) 1410 yang kedua-dua terletak di dalam Mukim Keratong, Daerah Rompin, Pahang sementara menunggu penyelesaian akhir rayuan Plaintif terhadap perintah Yang Arif Datuk Ramly bin Haji Ali yang diberikan pada 18/1/2002 kepada kandungan 18 yang mana Notis Rayuan bertarikh 22hb. Januari, 2002 telah pun difailkan.

Background Of The Case

On 10 October 2001 the plaintiff had filed a writ of summons against the plaintiff, praying, *inter ali*a, for the following orders:

1. Satu Deklarasi bahawa Defendan telah menyangkal/menolak Perjanjian "Oil Palm Plantation Operation and Maintenance Contract" yang mengikat Plaintif dan Defendan tanpa alasan yang munasabah.

2. Perintah Defendan kembalikan milikan 2 bidang tanah: PT 1298 HS(D) dan PT 2602 HS(D) 1410 kedua-duanya dalam Mukim Keratong, Daerah Rompin, Pahang kepada Plaintif dan seterusnya menahan Defendan dari mengganggu atau menghalang Plaintif dari menunaikan kerja-kerja Plaintif mengikut Perjanjian Tersebut.

3. Gantirugi Am dan exemplary.

4. Satu penyiasatan diadakan untuk menaksirkan kerugian yang dialami Plaintif dari masa Plaintif disingkir milikan Ladang Kosma 9 sehingga masa bila Plaintif dikembalikan milikan Ladang Kosma 9. Defendan diperintah mengemukakan akaun yang menunjukkan jumlah buah kelapa sawit mentah yang telah dituai dan diangkut dari Ladang Kosma 9 semasa Ladang Kosma 9 dalam milikan Defendan.

On the same day, the plaintiff filed another application (*vide* encl. 5) on a certificate of urgency, for an *ex parte* injunction compelling the defendant to surrender (kembalikan) vacant possession of the said land and to restrain the defendant from interfering and obstructing the plaintiff in carrying out its obligation under the "Oil Palm Plantation Operation and Maintenance Contract" dated 1 July 1999. The said *ex parte* application was granted on 17 October 2001 and by virtue of O. 29 r. 1 (2BA) RHC 1980, the said *ex parte* application lapsed after the expiry of 21 days from the date of the issue. In otherwords, the said *ex parte* injunction expired and lapsed on 7 November 2001. On 2 November 2001 the plaintiff filed an *inter partes* application for an injunction (*vide* encl. 18) praying for an order, *inter alia*, that:

(1) Bahawa Defendan, pengarah-pengarah, pegawai-pegawainya, pekerja-pekerjanya, kontraktor-kontraktornya atau ejen-ejennya ditahan dari mengganggu atau menghalang Plaintif dari melaksanakan hak-hak Plaintif dan/atau menunaikan obligasi Plaintif mengikut Perjanjian "Oil Palm Plantation Operation and Maintenance Contract" yang ditandatangani pada 1/7/1999 dan/atau menghalau Plaintif daripada milikan tanah di bawah pegangan PT 1298 HS(D) 1295 dan PT 2602 HS(D) 1410 kedua-dua dalam Mukim Keratong, Daerah Rompin, Pahang, Pahang.

The said *inter partes* application was dismissed with costs on the grounds that:

i) the balance of convenience lies infavour of the defendant; and

ii) damages seem to be a suitable and adequate remedy if the plaintiff succeed in his writ of summons against the defendants.

Upon dismissal of the said *inter partes* application the plaintiff filed a notice of appeal dated 22 January 2002 against the said decision.

Subsequent to that, the plaintiff then, on 7 February 2002, filed the present application for Erinford injunction pending disposal of the above appeal by the Court of Appeal.

I have scrutinised all the three applications for injunction filed by the plaintiff namely encl. 5, *(ex parte)*; encl. 18 *(inter partes)* and encl. 52 (Erinford). Enclosure 5 in it's nature is considered as a mandatory injunction ie, ordering the defendant to surrender vacant possession of the said land to the plaintiff to enable the plaintiff to continue performing their jobs as provided under the relevant agreement between them. While encl. 18 and encl. 52 are more in the form of prohibitory injunction with the same effect except for encl. 18 the time limit is until disposal of the writ of summons while for encl. 52, the time limit is until disposal of the appeal filed by the plaintiff.

The counsel for the plaintif argued that the present application should be granted on the following grounds:

i) that *status quo* must be maintained pending disposal of the appeal;

ii) that the appeal would be rendered nugatory in the event the plaintiff succeed in it if the application is not granted;

iii) that there exist special circumstances that warrant the granting of the application;

iv) that balance of convenience lies infavour of the plaintiff; and

v) that damages is not an adequate remedy.

The plaintiff relied his application on the strength of the principles established in *Erinford Properties Ltd. v. Cheshire County Council* [1974] 2 All ER 448 which empowers the court to grant a further limited interim injunction pending the hearing and disposal of an appeal, eventhough the earlier *inter partes* application for an injunction has been dismissed. The plaintiff also cited the case of *See Teow Guan v. Kian Joo Holdings Sdn. Bhd. & Ors.* [1997] 2 CLJ 299 to support his contention that the paramount consideration governing an application to grant a stay of proceedings or stay of execution or an application for some other interim preservation order of an appeal is that the appeal; if successful, should not be rendered nugatory and if, upon balancing all the relevant factors, it is clear that an appeal would be rendered nugatory without the grant of a stay or the interim preservation order, a stay or other appropriate interim relief should normally be directed.

Findings Of The Court

I agree with the plaintiff contention that the same principles of law are applicable to application for stay of execution and application for interim preservation order (which include application for an Erinford injunction). The ruling of the Court of Appeal in *See Teow Guan*'s case seems to support the contention. However, it must be stressed that in nature and effect, an application for an Erinford injunction is not really the same with an application for stay of execution. Both are different. In an application for stay of execution, the court had earlier made an order granting certain application which can be executed by the successful party, and the unsuccessful party, after having filed his notice of appeal against the said order, applies for a stay of execution of the said order. However, in an application for an Erinford injunction, the court had earlier dismissed an application, and pending appeal of the said dismissal, the unsuccessful party then applied for a limited injunction pending the appeal. There is no order to be executed by the successful party in this case. Of course the successful party ought to be free to act despite the pendancy of the appeal. On this issue, Meggary J in *Erinford* case had said:

> The answer to this was that no question of staying proceedings could arise, for the action had been dismissed and so there was nothing to stay.

An application for an Erinford injunction must be considered as an original application ie, an application started by itself. To support this, Jessel Mr in *Wilson v. Church* [1879] 11 Ch. D576 said:

> No one can say that this is an application to stay proceedings in the action. The action was dismissed. This is an original motion.

It is well-settled, that this court has jurisdiction to hear and determine an application for an Erinford injunction (as in the present case). It is not necessary for the applicant to apply to the Court of Appeal. *Erinford* case has established this principle, which has been followed by our courts in Malaysia (see: *Cocoa Processors Sdn. Bhd. v. United Malayan Banking Corporation Bhd. & Ors. (No. 2)* [1989] 1 CLJ 183; [1989] 1 CLJ (Rep) 436, *Ooi Meng Sua v. Aetna Universal Insurance Sdn. Bhd.* [1994] MLJU 12, and *Perumahan Wira Seberang Sdn. Bhd. v. Lim Teng Huat & Ors. and Third Party* [1995] MLJU 156). In *Erinford* case, Megarry J has said the followings:

> I can see no real inconsistency in any of these cases. The questions that have to be decided on the two occasions are quite different. Putting it shortly, on a motion the question is whether the applicant has made out a sufficient case to have the Respondent restrain pending the trial. On the trial, the question is whether the Plaintiff has sufficiently proved his case. On the other hand, where the application is for an injunction pending an appeal, the question is whether the judgment that has been given is one on which the successful party ought to be free to act despite the pendency of an appeal. One of the important factors in making such a decision, of course, is the possibility that the judgment may be reversed or varied. Judges must decide cases even if they are hesitant in their conclusions; and at the other extreme a judge may be very clear in his conclusions and yet on appeal be held to be wrong. No human being is infallible, and for none are there more public and authoritative explanations of their errors than for judges. A judge who feels no doubt in dismissing a claim to an interlocutory injunction may, perfectly consistently with his decision, recognise that his decision might be reversed, and that the comparative effects of granting or refusing an injunction pending an appeal are such that it would be right to preserve the *status quo* pending the appeal. I cannot see that a decision that no injunction should be granted pending the trial is inconsistent, either logically or otherwise, with holding that an injunction, should be granted pending an appeal against the decision not to grant the injunction, or that by refusing an injunction pending the trial the judge becomes *functus officio* quoad granting any injunction at all.
>
> There may, of course, be many cases where it would be wrong to grant an injunction pending appeal, as where any appeal would be frivolous, or to grant the injunction would inflict greater hardship than it would avoid, and so on. But subject to that, the principle is to be found in the leading judgment of Cotton LJ in *Wilson v. Church (No. 2)*, where, speaking of an appeal from the Court of Appeal to the House of Lords, he said, 'when a party is appealing, exercising his undoubted right of appeal, this Court ought to see that the appeal, if successful, is not nugatory'. That was the principle which Pennycuick J applied in the *Orion* case; and although the cases had not then been cited to me, it was on that principle, and not because I felt any real doubts about my judgment on the motion, that I granted counsel for the Plaintiffs the limited injunction pending appeal that he sought. This is not a case in which damages seem to me to be a suitable alternative.

From the above passage, the relevant principles expounded by Megarry J (as far as the present application is concerned) could be summarised as follows:

i) that a decision that no injunction should be granted pending the trial is not inconsistent with holding that an injunction should be granted pending an appeal against the decision not to grant the injunction;

ii) that by refusing an injunction pending the trial the judge does not become *functus officio* quoad granting any injunction at all;

iii) that the balance of convenience (ie, the comparative effects of granting or refusing an injunction pending an appeal) are such that it would be right to preserve the *status quo* pending the appeal;

iv) that it would be wrong to grant an injunction pending appeal, in cases where the appeal would be frivolous or to grant the injunction would inflict greater hardship than it would avoid;

v) that when a party is appealing, exercising his undoubted right of appeal, the court ought to see that the appeal, if successful, is not nugatory; and

vi) that injunction pending appeal is not applicable in cases where damages seem to be a suitable and adequate remedy;

vii) that to grant or not to grant the injunction is a matter of court's discretion which must be exercised based on the facts of each particular case. It is not a matter of right.

In *Cocoa Processors Sdn. Bhd. (supra)* Mohamed Dzaiddin J (now CJ), in applying the same principles established in *Erinford* case, has dismissed the plaintiff's application for an Erinford injunction on the grounds that there is no likelihood of a successful appeal being rendered nugatory; that the balance of convenience lies infavour of the injunction pending appeal being refused; and that damages seem to be a suitable and adequate remedy, if the appeal is allowed. Again, in *Ooi Meng Sua* case *(supra)*, Vincent Ng J has also applied the same principles and refused the plaintiff's application for an Erinford injunction. In doing so, the learned judge has also considered that there would be no impediment to the plaintiff enforcing any judgment in his favour should he succeed in his intended appeal, as the defendant company is a refutable insurance company. In other words the learned judge has considered that damages is a suitable and adequate remedy, in the event the plaintiff succeed in his appeal.

In another case, *Perumahan Wira Seberang Sdn. Bhd. (supra),* Jeffrey Tan JC (as he then was) went a step further when he ruled that an Erinford injunction proceeds on the premise of a subsisting injunction being dissolved, but to preserve the *status quo* pending an appeal against the order of dissolution the order dissolving the subsisting injunction is temporarily stayed until the outcome of the appeal. In that case, the earlier *ex parte* injunction has lapsed automatically under O. 29 r. 1(2B) of the RHC 1980 when the *inter partes* application was heard and dismissed. The court dismissed the plaintiff's application for an Erinford injunction on the ground that when the application *inter partes* was refused, there was no subsisting injunction to be dissolved. There was also no order dissolving a subsisting injunction to be stayed pending the outcome of an appeal.

Maintaining *Status Quo*

The concern of the plaintiff in the present case is to preserve the *status quo* so that the appeal, if successful, would not be nugatory. It is however not clear as to what is the period of *status quo* that the plaintiff is asserting in the present case. What the plaintiff is more interested is that the plaintiff should be allowed to remain in the said land and to harvest the oil palm fruits pending disposal of his appeal; and not to be evicted by the defendant who is the owner of the said land.

What is "*status quo*" for the purpose of granting an interlocutory injunction? The "*status quo*" is the existing state of affairs; but since state of affairs do not remain static, this raises a query: existing when? In *Garden Cottage Foods Ltd. v. Milk Marketing Board* [1984] AC 130, Lord Diplock has stated:

> The relevant *status quo* which it was said in *American Cyanamid Co. v. Ethicon Ltd*. [1975] AC 396, it is a counsel of prudence to preserve when other factors are evenly balanced, is a state of affairs existing during the period immediately preceding the issue of the writ claiming the permanent injunction or, if there be unreasonable delay between the issue of the writ and the motion for an interlocutory injunction, the period immediately preceding the motion. The duration of that period since the state of affairs last changed must be more than minimal, having regard to the total length of the relationship between the parties in respect of which the injunction is granted; otherwise the state of affairs before the last change would be the relevant *status quo*.

Applying the above principle, I am of the view that the relevant period of *status quo* in the present case must be the period immediately before the plaintiff filed his writ of summons (encl. 3) and his *ex parte* application for injunction (encl. 5) against the defendant. During that period the state of affairs between the parties was that the relevant agreement between them has been terminated by the defendant; the plaintiff's service and job (to collect the oil

palm fruits under the agreement) has also been terminated; and the plaintiff was ordered to leave the said land and to stop collecting the fruits. If that '*status quo'* is to be preserved, then the plaintiff's application must fail.

In any event, the issue of "*status quo"* is only relevant to be considered in cases where the balance of convenience is evenly balanced. This principle has been decided in *American Cyanamid Co. v. Ethicon Ltd.* [1975] AC 396; and *Garden Cottage Food Ltd. (supra)*. In the present case, the balance of convenience clearly lies in favour of the defendant. Therefore, the question of maintaining *status quo* as requested by the plaintiff does not arise.

Balance Of Convenience

The effect of the present Erinford injunction and the earlier *inter partes* injunction, which I have dismissed on 18 January 2002 is the same, except that in the earlier *inter partes* injunction the duration of injunction applied for was 'until the final disposal of the main writ' while in the present Erinford injunction, the duration of the injunction applied for was 'until disposal of the appeal.' The length of time may be the same. The effect on the parties, particularly the defendant is also the same. There is no change of circumstances and no new material evidence adduced.

Therefore, there is no reason why the balance of convenience should change.

As I have stated in my earlier grounds of judgment, the defendant would suffer greater hardship if the injunction is granted. At all material times, the defendant was and still the rightful owner of the said oil palm estate. The said contract dated 1 July 1999 between the plaintiff and the defendant was to appoint the plaintiff as contractor to operate and maintain the said estate (KOSMA 9) for a period of 20 years and during that period the plaintiff is entitled to purchase the oil palm fruits harvested from the said estate. Their relationship has became strained. In the circumstances, the continuation of the said contract may not be commercially viable in the future. In the long run, the defendant, being the rightful owner of the said estate may suffer long term losses and these losses could not be compensated under the contract. The contract does not provide for such losses suffered by the defendant.

Under the said contract, the defendant has the right to terminate the contract by giving three months notice in writing to the plaintiff in the event of the plaintiff not discharging its duties in accordance with the terms and conditions of the contract. However, if the plaintiff was wrongly terminated, the said contract expressly provides that the defendant shall forthwith pay 'liquidated damages' to the plaintiff, "a sum of Ringgit Malaysia 5 million for loss of profit, and a further sum for all the relevant capital outlay, expenses, disbursements, fees, charges, out-of-pockets expenses, incurred, paid or lost in commencing and continuing with the work." The parties to the contract have agreed to the provisions. Therefore they are bound by the provisions.

On the premise, I am convinced that the balance of convenience in this case lies more infavour of the defendant. It lies in favour of the injunction pending appeal being refused.

Appeal Rendered Nugatory

The main ground for the present application by the plaintiff is that the appeal if successful, shall not be rendered nugatory and therefore the application for an injunction pending the appeal should be granted. The plaintiff is relying on the principle established in *Erinford*'s case [1974] 2 All ER 448 which says that "when a party is appealing, exercising his undoubted right of appeal, the court ought to see that the appeal if successful is not nugatory." In *Cocoa Processors Sdn. Bhd. (supra)*, Mohamed Dzaiddin J (now CJ) in considering the same issue, has said:

> Megarry J in *Erinford* [1974] 2 All ER 448 recognised that one of the factors in granting the application was the possibility that the judgment might be reversed or varied. I agree that this is an important factor in favour of the Plaintiff. On the other hand, there are other considerations, eg, 'where any appeal would be frivolous, or to grant the injunction would inflict greater hardship than it would avoid, and so on.' Therefore considering the submissions of counsel from the point of view of the *Erinford* [1974] 2 All ER 448 principles, I find merits in the Defendants' objection. Having considered the whole position of the case, I am of the view that whether or not the Plaintiff succeeds in the appeal and in the main action will not be affected by its' failure to obtain this further interim injunction.

In order to assist me in exercising my discretion on this matter, it is pertinent to see that there would be no impediment to the plaintiff enforcing any judgment in its favour should the plaintiff succeed in its intended appeal as well as the main writ. Whether a successful appeal by the plaintiff against my earlier decision being rendered nugatory or not, we have to go back to the plaintiff's claim against the defendant in its writ and statement of claim. I have scrutinised all the prayers in the plaintiff's statement of claim (as listed above) and satisfied that whether or not the plaintiff succeeds in the appeal and in the main action will not be effected by its failure to obtain the present Erinford injunction. There would be no impediment to the plaintiff enforcing any judgment in its favour should it succeed in its appeal and ultimately in its writ. There is no evidence to show that the defendant, would be in no position financially, to honour the judgment obtained by the plaintiff. Therefore, I must say quite confidently that there is no likelihood of a successful appeal against my decision being rendered nugatory.

Damages An Adequate Remedy

In the present case, damages seem to be a suitable and adequate remedy. The plaintiff would be adequately compensated in damages for the temporary damage suffered between now and the date when the appeal is heard if my earlier decision is reversed by the Court of Appeal. The plaintiff's claim against the defendant in the writ and statement of claim is based on the strength of the "Oil Palm Plantation Operation and Maintenance Contract" dated 1 July 1999 between the plaintiff and the defendant. There is an express provision in the said contract about "liquidated damages" which says that:

> In the event KOSMA breaching the terms of this contract by unilaterally terminating the Contract for the work, then KOSMA shall forthwith pay KKSB a sum of Ringgit Malaysia 5 millions as liquidated damages for loss of profit, and a further sum for all the relevant capital outlay, expenses, disbursements, fees, charges, out-of-pocket expenses, incurred, paid or lost in commencing and continuing with the work.

Further more, in prayers 3 and 4, of the statement of claim, the plaintiff is asking for general and exemplary damages and to access the damages suffered by the plaintiff from the time the plaintiff was expelled from the said estate until the time when vacant possession of the said estate is handed over to the plaintiff as prayed in prayer 2 of the statement of claim. On all those provisions, I am satisfied that damages seem to be a suitable and adequate remedy for the plaintiff.

It is trite law that an injunction is not an appropriate remedy if damages is a suitable and adequate remedy. This principle has long been established in *London & Blackwell Rly Co. v. Cross* [1886] 31 Ch. D 354, (at p. 369) where Lindley LJ has said:

> The very first principle of injunctions is that you do not obtain injunctions for actionable wrongs for which damages are the proper remedy.

This principle was followed by Hashim Yeop Sani (CJM) in *Associated Tractors Sdn. Bhd. v. Chan Boon Heng & Anor* [1990] 2 CLJ 157; [1990] 1 CLJ (Rep) 30 when he said:

> But it would seem quite clear that the most important factor to consider as a matter of principle is the question of whether in lieu of the injunction damages would be an adequate and proper remedy because in the matter of injunctions and exercising its jurisdictions the Court act upon the principle of preventing irreparable damage.

In *Keet Geralds Francis Noel John v. Mohd Noor Abdullah & Ors* [1995] 1 CLJ 293, the Court of Appeal has touched on the same issue. In that case, Gopal Sri Ram JCA, has said the following:

> accordingly, the Judge would be entitled to take into account all discretionary considerations, such as delay in making the application or any adequate alternative remedy that would satisfy the Plaintiff's equity, such as an award of monetary compensation in the event that he succeeds in establishing his claim at the trial.

Even in *Erinford* case itself, the court had granted the application for an injunction pending appeal, on the ground that it was not a case in which damages was a suitable and adequate remedy. Megarry J in that case concluded:

> ... that I granted Mr. New Som the limited injunction pending appeal that he sought. This is not a case in which damages seem to me to be a suitable alternative.

Again, in *Cocoa Processors Sdn. Bhd. (supra)* and *Ooi Meng Sua (supra)*, the court dismissed the plaintiff's application for an injunction pending appeal on one theof the grounds that damages seem to be suitable and adequate remedy.

Conclusion

Applying the above principles and after considering all the relevant considerations, I have no hesitation to hold that the present application is not an appropriate case for me to exercise my discretion in favour of the plaintiff and therefore the application is dismissed with costs.